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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

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STANLEY F. FROMPOVICZ, JR.,
CAROL FRAMPOVICZ, t/a FAR AWAY
SPRINGS of RD #2, Box 4418
Jonestown, Pennsylvania 17038

v.

UNION TOWNSHIP
Municipal Building, RD #1
Jonestown, Pennsylvania 17038

UNION TOWNSHIP BOARD OF
SUPERVISORS
Municipal Building, RD #1, Box 1940
Jonestown, Pennsylvania 17038

SUPERVISOR BARRY L. SWANGER
UNION TOWNSHIP BOARD OF
SUPERVISORS
Municipal Building, RD #1, Box 1940
Jonestown, Pennsylvania 17038

SUPERVISOR KENNETH A. KINDT
UNION TOWNSHIP BOARD OF
SUPERVISORS
Municipal Building, RD #1, Box 1940
Jonestown, Pennsylvania 17038

SUPERVISOR DAVID A. CARBAUGH
UNION TOWNSHIP BOARD OF
SUPERVISORS
Municipal Building, RD #1, Box 1940
Jonestown, Pennsylvania 17038

ZONING OFFICER DONALD TSHUDY
Municipal Building, RD #1
Jonestown, Pennsylvania 17038

ZONING OFFICER WILSON JONES
Municipal Building, RD #1
Jonestown, Pennsylvania 17038

DAVID MILLER/ASSOCIATES, INC.
1976 Cenerville Road
Lancaster, Pennsylvania 17601

Civil Action No. 00-1750

J. Caldwell ✓

FILED
HARRISBURG
JAN 8 - 2001
MARY E. DIANDREA, CLERK
Per _____
DEPUTY CLERK

DEFENDANT, DAVID MILLER ASSOCIATES, INC.'S
MOTION TO DISMISS PURSUANT TO FED. R. CIV. PROC. 12(b)(6)

Comes now the defendant, David Miller/Associates, Inc. ("Miller Associates"), by and through his attorney, Jonathan K. Hollin of Powell, Trachtman, Logan, Carrle, Bowman & Lombardo, P.C., and respectfully requests that this Court dismiss the Plaintiff's Complaint against Miller Associates pursuant to Rule 12(b)(6) and/or in the alternative a more definite statement pursuant to Rule 12(e).

1. The movant is David Miller Associates, Inc., defendant herein, ("Miller Associates").
2. The respondents are plaintiffs, Stanley F. Frompovicz, Jr., Carol Frampovicz, T/a Far Away.
3. Plaintiffs have instituted a civil rights action against Union Township; Union Township Board of Supervisors; Supervisor Barry L. Swanger, Supervisor Kenneth A. Kindt, Supervisor David A. Carbaugh, Zoning Officer Donald Tshudy, Zoning Officer Wilson Jones, (collectively "Municipal Defendants") and Miller Associates. The three Count Complaint purports to allege Counts for Section 1983 due process violations, municipal liability and conspiracy.
4. The entire Complaint contains only three specific references to Miller Associates. Miller Associates is identified as civil engineering and land planning firm "responsible in part for evaluating zoning requests" for Union Township (Complaint paragraph 5) which hired the former Township Zoning/Code Enforcement Officer (Complaint paragraph 14) and was subsequently consulted with by the Township in connection with a proposed development plan (Complaint paragraph 25).
5. While Miller Associates is charged with violating Section 1983, there is no

allegation it was a "state actor" nor any allegation describing how, if at all, Miller Associates was allegedly involved in any alleged constitutional violations perpetrated by the Municipal Defendants.

6. Similarly, although Count II of the Complaint charges Miller Associates with engaging in a conspiracy with the Municipal Defendants to violate the plaintiff's civil rights, there is no allegation that an illegal agreement was entered into by Miller Associates, (hence, there is obviously no allegation as to when it was allegedly entered into), what the purpose of the alleged illegal agreement was or any overt acts taken by Miller Associates in furtherance thereof. In short, there is a complete absence of any allegations to support a conspiracy claim against Miller Associates.

7. In light of the above it is not surprising that no dates are pleading as to when Miller Associates allegedly engaged in any improper conduct which violated the plaintiff's rights under the Due Process clause of the Fourteenth Amendment.

8. Plaintiffs continually refer to the defendants as an undifferentiated mass despite their number (i.e. eight (8)). Thus, for instance, the municipal liability Count (III Municipal Policy Practice and Custom/Failure to Train and Supervise) seeks relief from all the "Defendants", which, presumably, or possibly, includes Miller Associates despite the fact that Miller Associates cannot possibly be liable as a municipality given the fact that it is not one.

9. Plaintiffs' Complaint insofar as it relates to Miller Associates is wholly lacking in the necessary elements needed to adequately plead a cause of action pursuant to Section 1983 for either direct or conspiratorial liability or otherwise. Accordingly, the Complaint should be dismissed as to Miller Associates or, in the alternative, a more definite statement mandated which would set forth the necessary allegations in support of such claims.

10. For the reasons set forth herein and in the Brief being submitted in connection

herewith, plaintiffs' Complaint should be dismissed as to Miller Associates.

WHEREFORE, Defendant David Miller Associates, Inc., respectfully request that this Honorable Court dismiss plaintiffs' Complaint as to Miller Associates and, grant Miller Associates such other relief as deemed appropriate by the Court.

Respectfully submitted,

Powell, Trachtman, Logan, Carrle, Bowman,
& Lombardo, P.C.

By: 

Jonathan K. Hollin
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King of Prussia, PA 19406
(610) 354-9700
Attorneys for David Miller Associates, Inc.

Date: January 5, 2001

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DAVID MILLER/ASSOCIATES, INC.

Civil Action No. 00-1750

CERTIFICATE OF NONCONCURRENCE

I, Jonathan K. Hollin, Esquire, counsel for David Miller Associates, Inc., do hereby
certify that I contacted Teri B. Himebaugh, Esquire (Plaintiffs' counsel) to obtain her
concurrence in the attached Motion. Plaintiffs do not concur in the attached Motion.

Powell, Trachtman, Logan, Carrle, Bowman,
& Lombardo, P.C.

By: _____

Jonathan K. Hollin

Date: January 5, 2001

CERTIFICATE OF SERVICE

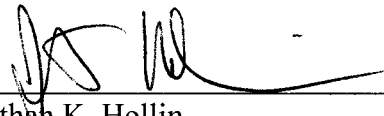
I, Jonathan K. Hollin, Esquire, hereby certify that a true and correct copy of the foregoing Defendant, David Miller Associates, Inc.'s Motion to Dismiss Pursuant to Fed. R. Civ. Proc. 12(b)(6) was served via first class mail, postage prepaid upon the following:

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Powell, Trachtman, Logan, Carrle, Bowman,
& Lombardo, P.C.

By: _____


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Date: January 5, 2001